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No. 82-274

In the Supreme Court of the United States

OCTOBER TERM, 1982

COMMONWEALTH OF PENNSYLVANIA, ET AL.,
PETITIONERS

v.

DELAWARE VALLEY CITIZENS' COUNCIL FOR CLEAR AIR,
ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the district court erred in holding petitioners in contempt of a consent decree.

2. Whether the district court erred in its choice of a sanction for petitioners' contempt.

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OPINIONS BELOW

The opinion of the court of appeals on the merits (Pet. App. 50a-68a) is reported at 678 F. 2d 470. The opinions and orders of the court of appeals on the application for a stay (Pet. App. 39a-49a) are unreported. The opinions and orders of the district court (Pet. App. 1a-34a, 35a-38a) are reported at 533 F. Supp. 869 and 533 F. Supp. 885.

JURISDICTION

The judgment of the court of appeals was entered on May 21, 1982. The petition for a writ of certiorari was filed on August 17, 1982. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. The Clean Air Amendments Act of 1970, 42 U.S.C. 1857 *et seq.*, required each state to submit to the Environmental Protection Agency (EPA) a state implementation plan for reducing air pollution to meet certain national standards. 42 U.S.C. 1857c-5.[1] Petitioner Commonwealth of Pennsylvania submitted a plan that included, among other things, an inspection and maintenance (I/M) program for automobile emission systems (Pet. App. 53a). The EPA modified and promulgated the plan; the Commonwealth sought review of certain aspects of the plan as promulgated, although it did not challenge the provisions dealing with the I/M program. *Id.* at 53a-54a; see *Commonwealth of Pennsylvania* v. *EPA*, 500 F. 2d 246 (3d Cir. 1974).

The Commonwealth never implemented the I/M program. In 1976, respondent Delaware Valley Citizens' Council for Clean Air (Delaware Valley) sued petitioners—the Commonwealth and certain state agencies—in the United States District Court for the Eastern District of Pennsylvania, seeking to require petitioners to implement the I/M program. In 1977 the United States also sued petitioners, seeking similar relief. On August 29, 1978, petitioners entered a consent degree with Delaware Valley and the United States, agreeing to implement an I/M program for certain areas by August 1, 1980 (Pet. App. 54a). The consent decree was embodied in an order of the court.

In March 1980, the parties and the court agreed to extend the deadline for implementing the program to May 1, 1981. Petitioners failed to meet that deadline. In June 1981, the district court, after learning from the EPA that air quality in

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[1]The Clean Air Act was amended in 1977. See 42 U.S.C. (Supp. IV) 7401 *et seq.* The provision governing state implementation plans now appears at 42 U.S.C. (Supp. IV) 7410.

the areas covered by the decree still did not meet the specified national standard, refused to extend the deadline further. The court declared petitioners to be in violation of the consent decree and ordered them to submit a plan for the immediate implementation of the I/M program. The court modified that plan and ordered that it be implemented by May 1, 1982. On petitioners' appeal, the court of appeals unanimously affirmed. Pet. App. 55a-56a. In *Commonwealth of Pennsylvania* v. *Delaware Valley Citizens' Council for Clean Air*, petition for cert. pending, No. 81-2331 (filed June 21, 1982), petitioners seek review of this decision.

2. Following the district court's decision of June 1981, the Pennsylvania legislature enacted a statute, H.B. 456, over the governor's veto, prohibiting the expenditure of any funds on the I/M program. Delaware Valley then moved to have petitioners declared in contempt (Pet. App. 56a).

In a lengthy opinion, the district court declined to consider H.B. 456 to be a changed circumstance that warranted modification of its order. The court noted that "the Commonwealth of Pennsylvania with a full range of technical and professional guidance and representation at its disposal entered, after considerable opportunity for deliberation and negotiation, into a consent decree in which it agreed to implement an I/M program" (Pet. App. 21a). The court further stated (*id.* at 21a-22a): "In this case, there is no doubt that [petitioners] are no longer complying with the consent decree. [Petitioners] themselves admitted, that with the passage of H.B. 456, they had discontinued all efforts to implement an I/M program * * *." The court accordingly declared petitioners to be in civil contempt.

The court then considered what sanctions to impose. It decided that Section 176(a) of the Clean Air Act, 42 U.S.C. (Supp. IV) 7506(a), provided a useful analogy. Section 176(a) specifies that if a state does not submit an adequate

implementation plan, the Secretary of Transportation shall not approve the award of any highway funds. The district court examined the legislative history of Section 176(a) and determined that its "coercive purpose * * * is clear" (Pet. App. 26a). The court reasoned that Section 176(a) provided the proper analogy because petitioners' actions effectively rendered key portions of the Commonwealth's implementation plan a nullity—as if the plan had never been submitted at all. The court accordingly (Pet. App. 29a)—

> enjoin[ed] the United States Secretary of Transportation from approving any projects or awarding any grants to the Commonwealth of Pennsylvania for highway projects in the * * * areas * * * defined in the consent decree, other than those grants required for safety, mass transit, or transportation improvement projects related to air quality improvement in those same * * * areas.

The court concluded that this sanction "serves to promote the underlying goal of the consent decree and the philosophies behind the enactment of the Clear Air Act" (*id.* at 30a), and that it "will not interfere with state sovereignty since it permits the state's action to stand as long as the state * * * remain[s] adamant in its refusal to establish the I/M program it agreed to, while it also encourages the state to reconsider its position and comply with the consent decree" (*ibid.*).

3. The court of appeals initially stayed the district court's order, although it unanimously "express[ed its] great concern regarding the failure of the General Assembly of Pennsylvania to enact legislation to implement the Consent Decree. Whatever question there may be regarding the precise contours of the district court's power to provide an equitable remedy in a situation such as * * * this case, there would appear to be no question regarding the obligation of the various state agencies to take steps to implement a

Consent Decree entered into a number of years ago and which in turn was utilized to obtain substantial funds from the Federal Government" (Pet. App. 40a).

Judge Garth dissented; he would simply have denied the stay (except to permit the United States to provide funds in case of an emergency). Judge Garth explained (Pet. App. 48a-49a):

> I do not believe that the Commonwealth should be permitted to flout orders of the United States District Court with impunity. The Governor of Pennsylvania, in vetoing [H.B.] 456 * * * had warned the legislature that federal highway funds might well be cut off if the bill were passed. * * * While I firmly believe that federal courts should not interfere with matters that are purely state prerogatives, * * * this case involves substantially different interests and considerations.

After hearing argument on the merits, the court of appeals affirmed the district court's order "in all respects" (Pet. App. 68a), holding that the district court had acted within its discretion by choosing a remedy suggested by the Clean Air Act itself (*id.* at 65a-67a). It noted that "[a]ny harm resulting to the citizens of Pennsylvania from a lack of federal highway funds can easily be brought to an end by actions of their elected representatives in the state legislature" (*id.* at 68a). The court of appeals then vacated its stay of the district court's order without dissent. On September 9, 1982, this Court denied petitioners' application for a stay of the court of appeals' judgment.

ARGUMENT

The district court correctly held that petitioners violated a court order reflecting an obligation they had voluntarily accepted; the court then chose an appropriate sanction. These determinations, well within the district court's discretion, do not warrant this Court's review.

1. In the consent decree, petitioners agreed to implement the I/M program by a certain date, and they did not do so. They therefore violated the decree. Petitioners appear to assert (Pet. 10-16) that the district court was precluded from finding them in violation because the reason for their disobedience was an action of the state legislature that took the form of a restriction on the use of appropriated funds. But while the reason for the violation might properly affect the choice of a sanction, it does not alter the fact that the court's order was violated.

Petitioners rely on the Second Circuit's decision in *New York State Association of Retarded Children, Inc.* v. *Carey*, 631 F. 2d 162 (1980). But as the court below recognized (see Pet. App. 62a), and the Second Circuit explained, the consent decree in *Carey* explicitly "envisioned the practical and political difficulties which the Governor [a party to the decree] necessarily faced regarding the appropriation of funds * * *. [Specifically,] the governor consented only to act within his 'lawful authority * * * and subject to any legislative approval that may be required' " (631 F. 2d at 166). The consent decree entered by petitioners contained no such express limitation, and neither the district court nor the court of appeals found such a limitation to be implied. Petitioners suggest no reason for this Court to reconsider the construction of the consent decree by the lower courts.

Nor can it plausibly be argued—as petitioners seem to suggest (*e.g.*, Pet. 13)—that every federal court order directed to a state is necessarily subject to the condition that it will be of no effect if the state legislature does not appropriate the funds necessary to obey the order. A "[s]tate-law prohibition against compliance with [a] District Court's decree cannot survive the command of the Supremacy Clause of the United States Constitution" (*Washington* v. *Washington State Commercial Passenger Fishing Vessel Association*, 443 U.S. 658, 695 (1979); see also *North*

Carolina State Board of Education v. *Swann*, 402 U.S. 43, 45 (1971)), and a state may not evade this principle by the expedient of enacting its "prohibition" in the form of a limit on the use of appropriated funds. It is inconceivable, for example, that a federal court's writ of habeas corpus, directed to a state official, could be defeated by the state legislature's prohibiting any funds from being spent to release the person held in custody.[2]

2. In determining the appropriate sanction, the district court did take into account the fact that a legislative restriction on appropriations was the reason for petitioners' disobedience. The court did not, for example, require Pennsylvania officials to defy state law and spend the necessary funds under threat of personal sanctions; nor did it direct sanctions at members of the legislature.[3] Instead, the

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[2] *Brewster* v. *Dukakis*, 675 F. 2d 1 (1st Cir. 1982), on which amici Greater Pittsburgh Chamber of Commerce, *et al.*, rely (Amici Br. 7-8), is in fact inconsistent with the position taken by petitioners. In *Brewster*, the district court specifically interpreted the decree to require only that state officials use their best efforts to obtain funds from the state legislature. 675 F. 2d at 3. The court of appeals upheld this interpretation only after carefully examining the text of the decree and determining that by its terms it required only the officials' best efforts and did not mandate that the necessary funds be spent (*id.* at 4 & nn.3, 4); implicit in this approach is the assumption that a decree could mandate actions by a state that require the appropriation of funds.

[3] In this respect, also, this case differs from *Carey*; there the district court apparently found state officials in contempt for not spending funds in a way that state law prohibited. See 631 F. 2d at 164-165. The court of appeals in *Carey* indicated that it would approve a sanction, analogous to that imposed by the district court here, that gave the state a choice between appropriating the necessary funds and facing some undesirable consequence; such a sanction, the Second Circuit said, "leaves the question of the expenditure of state funds in the hands of citizens of the state, not in the hands of federal judges." *Id.* at 165.

Similarly, in *Welsch* v. *Likins*, 550 F. 2d 1122 (8th Cir. 1977), on which amici rely (Amici Br. 8-9), the court of appeals vacated a district court order that required state officials to spend funds that had not been appropriated by the state legislature to improve a mental institution to

district court looked to the statute that its decree was issued to enforce and fashioned a remedy that it believed best effectuated the purpose of that statute.[4]

Petitioners also contend (Pet. 23-25) that the district court abused its discretion by not attaching proper weight to the interests of those who use Pennsylvania highways and profit from their construction. But the court of appeals upheld the district court's exercise of its discretion, and the district court's balancing of the equities closely reflected the balance Congress struck when it enacted the Clean Air Act.[5] There is accordingly no reason for this Court to intervene. We do not suggest that the district court's approach was the only reasonable one; in other circumstances, we might

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meet constitutional requirements; the court ruled that the state might instead choose other options, such as closing the institution or reducing the number of patients. The court in *Welsch* emphatically rejected the suggestion that the state's obligation to comply with a court order depended on the legislature's willingness to appropriate the necessary funds. See 550 F. 2d at 1132.

[4]Petitioners assert (Pet. 19-22) that the district court's sanction infringes *Congress's* prerogatives to appropriate and spend money; they cite *State Highway Commission* v. *Volpe*, 479 F. 2d 1099 (8th Cir. 1973) in support of this contention. But the suits (brought by Delaware Valley and the United States) that culminated in the consent decree violated by petitioners were authorized by the Clean Air Act. Congress obviously envisioned that such suits would be brought and would sometimes result in decrees requiring certain actions by the states. Petitioners suggest no reason for believing that Congress intended district courts to be powerless to impose sanctions to enforce such a decree if a party disobeyed it. By choosing a sanction suggested by the Clear Air Act itself, the district court plainly acted in a fashion fully consistent with Congress's intentions.

[5]In making this contention, petitioners assert a conflict between the decision below and *Gautreaux* v. *Romney*, 457 F. 2d 124 (7th Cir. 1972) But *Gautreaux* involved a different sanction, imposed for different purposes, with different competing interests at stake; and the sanction imposed in *Gautreaux* did not closely correspond with a scheme of sanctions chosen by Congress.

advocate a remedy that did not have as severe an impact on an ongoing federal program. But on the facts of this case, the district court's approach was plainly appropriate.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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